

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

YAMILETH ORTIZ and
DOMINQUE RAMIREZ
Plaintiffs,

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VS.

Civil Action No. _____

UNITED STATES OF AMERICA
Defendant.

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**PLAINTIFFS' ORIGINAL COMPLAINT AGAINST
THE UNITED STATES OF AMERICA**

TO THE HONORABLE U.S. DISTRICT JUDGE:

COME NOW, Plaintiffs YAMILETH ORTIZ and DOMINQUE RAMIREZ, and files this Original Complaint for damages against the United States of America ("Defendant") herein, and would respectfully show the Honorable Court the following:

A. PARTIES

1.1 Plaintiffs, YAMILETH ORTIZ and DOMINQUE RAMIREZ are individuals residing in Hidalgo County, Texas.

1.2 Defendant, UNITED STATES OF AMERICA, acted through its agency, THE UNITED STATES OF AMERICA, acted through its agency, US CUSTOMS and BORDER PROTECTION/ US DEPARTMENT OF HOMELAND SECURITY.

B. JURISDICTION

2.1 This action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§1346(b), 2671 *et seq.*, against the United States of America, which vests exclusive subject matter jurisdiction of Federal Tort Claims Litigation in the Federal District Court.

C. VENUE

3.1 Venue is proper in this Court under 28 U.S.C. §1402(b) and §1391(e) because a substantial part of the events giving rise to Plaintiffs' claim arose in this judicial district. Further, Venue is proper in this district pursuant to 28 U.S.C. §1391(e) and §1402(b), as the United States is a Defendant and Plaintiffs reside in this district and have their domicile in this district.

D. CONDITIONS PRECEDENT

4.1 Plaintiffs timely presented this claim in writing to the United States Customs and Border Protection/ United States Department of Homeland Security. Attached hereto as "Exhibit A" and is incorporated herein by this reference. Accordingly, all claims are denied, and Plaintiffs have complied with all jurisdictional prerequisites and conditions precedent to commencement and prosecution of this litigation.

E. FACTS

5.1 This is a Federal Tort Claims Action for monetary damages sustained by the Plaintiffs arising out of the personal injuries to Plaintiffs YAMILETH ORTIZ and DOMINQUE RAMIREZ as a result of the negligent operation of a vehicle by Joshua Thomas Monahan an agent and/or employee of the United States Customs and Border Protection/ United States Department of Homeland Security.

5.2 This claim concerns a violent automobile collision on or about May 5, 2019, on East Monarch Lane in Rio Grande City, Starr County, Texas, wherein Joshua Thomas Monahan working within the course and scope of his employment with the United States Customs and Border Protection/ United States Department of Homeland Security, negligently caused a wreck that resulted in personal injuries and damages to Plaintiffs.

5.3 Defendant was stationary facing east on Monarch Lane in Rio Grande City, Starr County Texas. Plaintiffs, Yamileth Ortiz and Dominque Ramirez were traveling north

exiting the parking area and turned right onto East Monarch Lane and proceeded to travel eastbound directly behind Defendant, upon approaching Defendant's vehicle, Joshua Thomas Monahan suddenly began to move his vehicle in reverse without safety and struck Plaintiffs' vehicle.

5.4 As a direct and proximate result of Defendant's negligence, Plaintiffs, Yamileth Ortiz and Dominque Ramirez sustained serious personal injuries and damages, including but not limited to, multiple herniated discs to her upper and lower lumbar area. As a result of Plaintiffs, Yamileth Ortiz and Dominque Ramirez' injuries: (i) received and continues to receive physical therapy; (ii) received and continues to receive injections for pain and inflammation; (iii) received chiropractic treatment; (iv) suffers from depression. Plaintiffs will continue to require medical treatment for their injuries for the foreseeable future.

**F. CAUSES OF ACTION AGAINST
THE UNITED STATES OF AMERICA**

- 6.1 The act and/or omission by the United States was negligent;
- 6.2 The United States had a duty to exercise ordinary care and operate the motor driven equipment reasonably and prudently;
 - a. Defendant failed to keep a proper lookout;
 - b. Defendant failed to yield the right of way;
 - c. Defendant failed to back up when unsafe;
 - d. Defendant failed to pay adequate attention;
 - e. Defendant failed to timely apply the brakes;
 - f. Defendant failed to take evasive action; and
 - g. Defendant failed to use due caution;
- 6.12 Under the laws of the State of Texas, a private person would be liable to Plaintiffs for this act and/or omission. Thus, under 28 U.S.C. §2674, the United States is liable to Plaintiffs for their damages resulting from the collision.

G. DAMAGES

7.1 As a direct and proximate result of Defendant's negligence, Plaintiffs suffered injuries which would not otherwise have occurred. Plaintiffs hereby plead for all damages available under Texas state law, federal law, and equity including but not limited to:

- a. Physical pain and mental anguish in the past and future;
- b. Loss of earnings;
- c. Loss of earning capacity;
- d. Physical impairment in the past and future;
- e. Physical disfigurement in the past and future;
- f. Loss of household services in the past and future; and
- g. Property damage.

H. PRAYER

8.1 For the reasons, Plaintiffs ask for judgement against Defendant for the following:

- a. Actual damages of \$700,000.00;
- b. Property damage of \$25,000.00;
- c. Costs of suit;
- d. Post-judgment interest; and
- e. All other relief the Court deems appropriate.

Respectfully submitted,

NAVA LAW GROUP, P.C.

By: /s/ Richard Jason Nava
Richard J. Nava
State Bar No.24083552
4909 Bissonnet St., Suite 100
Bellaire, Texas 77401
713-661-9900
Email: eservicerjn@navalawgroup.com
ATTORNEYS FOR PLAINTIFFS

1300 Pennsylvania Avenue NW
Washington, DC 20229



U.S. Customs and
Border Protection

**PLAINTIFFS'
EXHIBIT**

A

November 19, 2021

Richard J. Nava
Nava Law Group, P.C.
502 W. University Drive
Edinburg, Texas 78539

Via Certified Mail
Return Receipt Requested

RE: Standard Form 95 Administrative Claim of Yamileth Ortiz and Dominique Ramirez

Dear Mr. Nava,

Our office has reviewed the administrative claims you filed with U.S. Customs and Border Protection on or about April 12, 2021, on behalf of Yamileth Ortiz in the amount of \$350,000 and Dominique Ramirez in the amount of \$350,000.

The Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*, grants the head of each federal agency or his/her designee the authority to consider and settle administrative claims for damages caused by the wrongful act or omission of government employees while acting within the course and scope of their employment. Because discussions between you, acting on behalf of the Claimants, and U.S. Customs and Border Protection failed to administratively resolve these claims, I am formally denying the claims.

Under governing regulations, you have the right to file suit in an appropriate United States District Court no later than six months after the date of mailing this notification.

Sincerely,

W.M. Maglione for:

Ryan J. Scudder
Acting Deputy Chief
U.S. Border Patrol